IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10698 of 2002
WITH
CIVIL APPLICATION NO. 8449 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

P I INDUSTRIES LIMITED

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10698 of 2002
M/S TRIVEDI & GUPTA for Petitioner No. 1
MR. SUDHIR MEHTA, AGP for Respondent No. 1-2
MR J.G. SHAH WITH MR HARSHAD J SHAH for Respondent No. 3

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 26/12/2002

CAV JUDGEMENT

1. In this petition under Article 227 of the

Constitution of India the petitioner Company has been praying for holding and declaring that the Order of Reference dated 24-9-2002 (Annexure-A) is without jurisdiction and authority-in-law and therefore, void and non-est; further holding and declaring that the ex parte order dated 7-10-2002 (Annexure-B) is also beyond the scope and purview of the terms/order of Reference and without jurisdiction and that, both the impugned orders (Annexure- A & B) are violative of Article 14 & 19 (i)(g), arbitrary, discriminatory, oppressive, unjust, irrational and bad in law and to pass an order or direction quashing and setting aside the impugned orders.

2. The say of the petitioner is that, respondent No.3 is an employee of the petitioner Company as D.G. Set Operator; that respondent No.3 was reportedly indulging into the acts of omission and commission amounting to misconduct of not following the instructions and orders of superiors and of willful insubordination or disobedience, the Company issued showcause notice dated 16-4-2002 to respondent No.3, and then as a penalty suspended for 3 days. That due to administrative reasons and exigencies of work respondent No. 3 came to be transferred by an order dated 4-6-2002 (Annexure-C) to Udaipur; that the said order has been duly issued and served on respondent No.3, that the said transfer order stipulates (i) during period he is located at Udaipur an additional amount of Rs.500/- will be paid to him; (ii) he can draw an advance upto Rs.5000/- to be accounted for on joining duty at Udaipur towards cost of transportation etc; and that the said transfer order, with the aforesaid two stipulation was duly served and was accepted by respondent no.3 on 5-6-2002 and from 5-6-2002 respondent No.3 stood relieved from Panoli plant; that in pursuance of the stipulations in the said transfer order respondent no.3 made an application on 5-6-2002 demanding an advance of Rs.5000/- stating that since his transfer was effected to Udaipur he required said amount of Rs.5000/- for transporting his luggage etc; that said amount of Rs.5000/- was paid to him on same day i.e. on 5-6-2002 itself; that respondent No.3 was required to report at transferred place i.e. Udaipur on/or before 12-6-2002 as per instructions/ directions in the said transfer order; that instead of reporting at Udaipur and resuming his duty there, respondent No.3 forwarded applications on one pretext or the other and did not report for duty at Udaipur. In view of the adamant defiance of office order by respondent no.3 another order was sent to respondent no.3 on/or about 10-7-2002 directing him to report for duty at Udaipur. That respondent No.3 went on applying for leave on one pretext or the other and that while on

one hand respondent no.3 made applications for leave, on the other hand he approached this Court by way of Special Civil Application No. 5820 of 2002 praying for stay / not implementing the transfer order and also directing the Commissioner of Labour to hold conciliation proceedings. On or around 1-10-2002 this Court was informed that the Deputy Labour Commissioner, Vadodara, had already referred the matter to Industrial Tribunal, Vadodara, by order dated 24-9-2002 and in that view of the matter present respondent withdraw said Special Civil Application No. 5820 of 2002. The order of Reference dated 24-9-2002 impugned in the present petition has been made by Incharge- Dy. Labour Commissioner, Vadodara and the same culminated into Reference (I.T.) No. 138 of 2002. On or around 3-10-2002 office of the Industrial Tribunal issued notice to the petitioner intimating about the subject reference proceedings, which was received by the petitioner on/or around 7-10-2002. That the petitioner Company has, as on 16-10-2002, not received any statement of claim from respondent No.3; that as respondent No.3 was not reporting for duty at his transferred place i.e. Udaipur and was remaining absent on one pretext or another the Company was constrained and left with no alternative but to issue chargesheet dated 1-9-2002 and the same was served on respondent no.3. Departmental inquiry proceedings have been initiated and have commenced at Udaipur from 9-10-2002. That respondent no.3 instead of filing statement of claim in the reference proceedings, without giving copy to the petitioner submitted an application dated 7-10-2002 praying inter alia for an injunction/ direction against the petitioner to postpone /stay the above referred departmental proceedings and also to stay the implementation/ operation of transfer order dated 4-6-2002; that the Industrial Tribunal without issuing notice to the petitioner, straightaway granted ex-parte injunction/stay order staying proceedings of departmental inquiry which had already commenced at Udaipur with issuance and service of the chargesheet dated 13-9-2002 and the hearing of which was scheduled for 9-10-2002; that the said order/ direction is beyond territorial jurisdiction in as much as it relates to an inquiry which has been initiated and commenced at Udaipur; that the said order is contrary to the settled legal position relating to the relief for staying proceedings of departmental inquiry; that as per provisions u/s 10 of I.D. Act the order of Reference could have been, if at all, it had to be made, should have been made by the Labour Commissioner as the petitioner Company is employing more than 100 workmen and therefore petitioner is constrained to approach this Court at this stage

against said two orders. Thus it would be seen that the order of Reference dated 24-9-2002 (Annexure-A) and the order dated 7-10-2002 (Annexure-B) passed by the Industrial Tribunal are impugned being without jurisdiction and authority in law besides being illegal, arbitrary, unjustified, misconceived and unreasonable.

3. Vide order dated 21-10-2002 this Court (Coram: R.R. Tripathi, J) issued rule and also notice as to interim relief, returnable on 26-11-2002. In the meantime ad-interim relief in terms of Para- 8 (C) that is staying the implementation and operation of order dated 17-10-2002 at Annexure-B, also staying further proceedings of Reference being Reference (IT) No. 138/2002 as well as the operation of Reference dated 24-10-2002. Therefore respondent no.3 filed Civil Application No. 8449 of 2002 under Article 226 (3) of the Constitution of India praying for vacation of the interim order passed in terms of Para-8 (C) of the petition.

Vide order dated 26-11-2002 learned advocates appearing for the parties submitted that the main petition be fixed for final hearing looking to the contentions raised by the petitioner as well as the respondent. In view of the said statement main petition was directed to be fixed for final hearing on 4-12-2002 and interim relief continued and the petition has been finally heard and being decided by this order.

4. The order of reference (Annexure-A) passed by Incharge Deputy Commissioner of Labour, Vadodara, is sought to be quashed and set aside contending that under provisions of section 10 of the I.D. Act the order of Reference if at all required and justified, could be made by the appropriate Government, that is State Government or by the Commissioner of Labour but not by Incharge Dy. Commissioner of Labour as the petitioner Company has been employing more than 100 workmen. The impugned reference order is also challenged contending that the same suffers from non-application of mind in as much as the transfer order is in accordance with the terms & conditions of the employment incorporated in the appointment letter itself and the same would not constitute an industrial dispute as defined and contemplated under section 2 (k) of the Act and therefore the impugned order of Reference as to where respondent No.3 should be placed, could not and ought not to have been referred by the concerned authority. The order dated 7-10-2002 (Annexure-B) is challenged contending that the departmental proceedings is beyond the purview of terms of Reference dated

24-9-2002 (Annexure-A) and otherwise also departmental inquiry could not have been stayed or injuncted and the order dated 7-10-2002 (Annexure-B) is bad and unsustainable in law. Also on the ground considering limits of territorial jurisdiction of the Industrial Tribunal, Vadodara, which has passed impugned order dated 7-10-2002, since transfer order dated 4-6-2002 has become duly effective and has been in operation legally as well as factually and the respondent No.3 stands transferred to Udaipur and chargesheet dated 13-9-2002 has been issued by the authority at Udaipur and the inquiry proceedings have been initiated and conducted at Udaipur, and therefore, the Industrial Tribunal at Vadodara does not have territorial jurisdiction to pass order staying departmental proceedings at Udaipur; that the order dated 7-10-2002 is bad in law in as much as it is a non-speaking and unreasoned order.

5. I have heard the submissions advanced by learned counsel appearing for the petitioner Company as well as respondent No.3 workman.

6. It is not disputed that respondent no.3, an employee of the petitioner company was working at Panoli, District - Bharuch as D.G. Set Operator. That on 4.6.2002, respondent no.3 was served with the order issued by Managing Director / Director of the petitioner company, whereby respondent no.3 was transferred from factory 237, GIDC, Panoli to factory Udaipur Road, Udaipur . The said transfer order required respondent no.3 to report for work at Udaipur latest by 12.6.2002; it is also not disputed that respondent no.3 vide letter dated 12.6.2002 and by subsequent correspondence prayed for leave for one reason or the other from time to time till 11-9-2002. That the charge dated 13.9.2002 was issued by the petitioner company and served on respondent no.3, to which respondent no.3 filed his explanation dated 1.10.2002. That as per the charge sheet, the inquiry proceedings were scheduled to commence from 9.10.2002 at Udaipur; that on 24.9.2002, pursuant to the failure report dated 26.8.2002, the order of reference dated 24.9.2002 came to be passed by the Incharge Deputy Commissioner of Labour, Vadodara, which culminated into Reference (IT) No. 138 of 2002. That the petitioner was served with the notice issued by the Industrial Tribunal on or around 3.10.2002 and respondent No. 3 was required to submit his statement of claim on or before 22.10.2002, and written statement by petitioner Company on or before 22.11.2002. That on 7.10.2002, an application praying for injunction / direction against the petitioner to

postpone / stay the inquiry proceedings to be commenced from 9.10.2002 and also to stay the implementation / operation of the transfer order was filed and the Tribunal granted ex-parte injunction / stay order staying the proceedings of departmental inquiry which was being conducted at Udaipur. It is also not disputed that the petitioner company has been employing more than 300 workmen.

7. Section 7 of the Industrial Disputes Act (hereinafter referred to as "the Act") deals with the power to constitute the Labour Court for adjudication of industrial dispute relating to any matter specified in the second schedule. Section 7A of the Act deals with the power to constitute Industrial Tribunal for the adjudication of industrial dispute relating to any matter whether specified in the second schedule or the third schedule. Section 10 of the Act deals with the reference of dispute to Board, Courts or Tribunals. Clause (b), (c) and (d) and the proviso read as follows :

Clause (b)
refer any matter appearing to the concerned with or relevant to the dispute to a court of inquiry, or

Clause (c)
refer the dispute or any matter appearing to be connected with, or relevant to the dispute, if it relates to any matter specified in the second schedule, to a Labour Court for adjudication, or

Clause (d)
refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the second or third schedule, to a Tribunal for adjudication

Provided that where the dispute relates to any matter specified in the third schedule and if not likely to affect more than 100 workmen, the appropriate government may, if it so thinks fit, makes the reference to a Labour Court under Clause (c).

Section 39 of the Act relates to delegation of powers. Same reads as follows :

Section 39 : Delegation of powers

The appropriate Government may by notification in the official gazette, direct that any power exercisable by it under this Act or rules made thereunder shall in relation to such matters and subject to such conditions, if any, as may be specified in the direction, by exercisable also,-

(a) where the appropriate government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the Notification, and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the Notification.

The second schedule under the Act deals with the matters within the jurisdiction of the Labour Court. Item No.6 thereof reads as follows :

Item No.6
All matters other than those specified in the Third Schedule.

The third schedule deals with the matters within the jurisdiction of Industrial Tribunal. Item No.11 therein reads as follows.

Item No.11
Any other matter may be prescribed.

8. Reference order dated 24.9.2002 signed by the Incharge Deputy Labour Commissioner, Vadodara (page-23) mentions that the Incharge Deputy Labour Commissioner has the authority to make a reference order, in view of the delegation of authority under Subsection (1) of Section 10 and Subsections 4 and 5 of Section 12 (except) for Item No.3 of Schedule 2 and Item Nos.9,10 and 11 of Schedule 3 for the establishment employing less than 100 workmen. Referring to this, it has been submitted by Mr. K.M. Thakar, learned advocate for the petitioner company that the petitioner company has been employing more than 300 workmen and, therefore, Incharge Deputy Labour Commissioner has no authority in law to make a reference order, and that the delegation of power to make reference in favour of the Incharge Deputy Labour Commissioner

would be in case of establishment employing 100 or less than 100 workmen and in the instant case, it would be the State Government which is the appropriate authority.

Mr. J.G. Shah, learned Senior counsel for respondent no.3 relying on the decision in the case of Gujarat State Machine Tools Corporation Ltd. Vs. A.I. Shaikh and another, XXXI(1) GLR 614 (D.B.), contended that for the purpose of proviso to Section 10(1) of the Act, the criterion would be the number of persons affected and not the number of workers employed in the establishment. In case of Gujarat State Machine Tools Corporation Ltd.(supra) a challenge was brought under Article 226 of the Constitution of India to an action making 11 references under the Act for adjudication of industrial dispute to the Labour Court, Bhavnagar. While considering Section 10 and Schedule 3 of the Act, the Division Bench held that the order referring a dispute to a Labour Court is an administrative act and so even if once a decision is taken not to refer the matter, subsequently a reference can be made and the matter may be included in the third schedule, but if the dispute is not likely to affect, more than 100 workers, the dispute may be referred to a Labour Court instead of Industrial Court. In para-6, it is observed that first proviso to Section 10(1) of the Act becomes relevant for deciding the same. The first proviso to Section 10(1) of the Act provides that where the dispute relates to any matter specified in the third schedule and is not likely to affect more than 100 workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c). Therefore, even assuming that the matter is referred to in the Third Schedule, the reference can be made to a Labour Court for resolving their disputes, if it is not likely to affect more than 100 workmen. From the facts of the present case, therefore the requirements of this proviso are complied with and that is why the dispute is referred to the Labour court for adjudication. Under the proviso to Subsection 1 of Section 10 where the dispute related to any matter specified in the Third Schedule and not likely to affect more than 100 workmen, the appropriate Government may, make the reference to a Labour Court under Clause (c). Thus according to Gujarat State Machine Tools Corporation Ltd (supra) the criterion for making reference is the number of workers affected,not the number of workers employed in an establishment.

Notification dated 21-4-1982, bearing No: KH-R-260/IDA-1078-11862 (B)-(i)-JH has been referred to in Reference order dated 24-9-2002. Mr.Sudhir Mehta,

learned AGP has placed on record Notification dated 18-8-2001, bearing No: KHR-2001-173-IDA-102001-607-M (2). Perusal of the same suggests that, by the said notification the notification dated 21-4-1982 bearing No. KH-R-260/IDA-1078-11862 (B)-(i)-JH has been superseded for the purpose of delegation of power under section 39 of the Act. From this notification it has been submitted by Mr. K.M. Thakar for the petitioner that, for undertaking employing 100 and more employees the authority to issue reference order vests in the Labour Commissioner.

The notification referred to in Reference Order dated 24-9-2002 has also been placed on record which speaks of the authority of the Labour Commissioner to make reference in case of undertakings employing less than 100 employees. It may be seen that both the these notifications, at Item No. 2 refer to the undertaking employing more than 100 employees and lessthan 100 employees respectively. It may also be appreciated that both these notifications, particularly the notification referred to in the Reference order dated 24-9-2002 the Item No.1 Column No.1 thereof refers to all industries and the second column refers to an individual workman affected; meaning thereby, in case of all industries irrespective of the number of workmen when a dispute is raised by an individual workman, the authority mentioned therein namely as Deputy Commissioner of Labour has the authority to issue reference order. In the instant case the dispute has been raised by the individual workman, viz. respondent no.3 and in that case no matter whether the petitioner has been employing morethan 100 workmen the Deputy Commissioner of Labour pursuant to the notification referred to in the Reference Order will have the authority to pass the order when the dispute has been raised by an individual workman, i.e. respondent No. 3. This will also suggests that as far as for the purpose of making reference u/s 10 (1) (c) proviso of the Act, the principle laiddown in case of Gujarat State Machine Tools Corporation Ltd (supra) is squarely applicable. In this view of the matter the reference cannot be said to be not maintainable as without authority of law having been issued by the Incharge Deputy Commissioner of Labour, Vadodara.

10. Another limp of arguments of Mr. K.M. Thaker, challenging the reference order dated 24.9.2002 (Annx. 'A') is on the ground of non-application of mind inasmuch as the letter of appointment of respondent no.3 contains the term of transfer making the services of respondent transferable.

11. It is not in dispute that in the instant case, there are no Certified Standing Orders of the petitioner company itself. It is not disputed by Mr. Thakar, that in absence of standing orders of the petitioner company, it is the model standing orders which would prevail. It is submitted by Mr. J.G. Shah, that in absence of model standing orders making the services of employee transferable, a clause in the appointment order making the services of employee transferable is of no meaning, and only on the strength of clause of transferability of the services in the appointment letter, an employee cannot be transferred.

Section 2(A) and proviso of the Industrial Employment (Standing Orders) Act,1946 reads as under :

Section 2 (A)

Where this Act applies to an industrial establishment, the model standing orders for every matter set out in the schedule applicable to such establishment shall apply to such establishment from such, date as the State Government may by notification in the Official Gazette appoint in this behalf:

Provided that nothing in this section shall be deemed to affect any Standing Orders which are finally certified under this Act and have become into operation under this Act, in respect of any industrial establishment before the date of coming into force of the Industrial Employment (Standing Orders) (Bombay Amendment) Act, 1975.

Schedule 1 - Model Standing Orders admittedly does not include transfer and in absence of certified standing orders of service conditions will be governed by / under model standing orders, and the model standing orders, admittedly, does not enable the petitioner company to transfer an employee much less outside the State. In para.6 of the affidavit in reply it has been contended by respondent no.3 that he was transferred to Udaipur by an order dated 4.6.2002 with a view to prevent respondent no.3 from taking any part in the organization, registration of the trade Union of the workmen working in the petitioner company, and that therefore the said order of transfer is liable to be treated as having been made mala fide. Clause 7 of Schedule 5 include mala fide transfer of a workman from

one place to another under the guise of following the management policy.

In the case of Sipla Ltd. Vs. Jayakumar R. and another (1999) 1 SCC 300, it has been held by the Supreme Court that in case where the standing order of the establishment providing for intra establishment transfer and mentioning nothing about inter-establishment transfer, in such circumstances the provision of transfer as contained in the letter of appointment not in conflict with that contained in the standing orders. Hence, the inter establishment transfer of such an employee not violative of standing orders. Facts of the present case suggests that this decision is of no assistance to the petitioner.

The above discussion also reveals that in absence of certified standing orders, it is the model standing orders which would prevail and the same does not include transfer, and merely on the strength of the condition in the appointment letter making the services of respondent no.3 transferable, the same can certainly be a subject matter of reference order and in view of Sec. 2 (A) as above it cannot be said that the reference order is without application of mind, as contended by Mr. Thaker.

12. It is also submitted by Mr. K.M. Thakar that the Industrial Tribunal at Vadodara will have no jurisdiction to issue an order staying inquiry proceedings initiated and conducted at Udaipur. It is not disputed that it is the authority at Udaipur which has served the charge sheet to respondent no.3 and inquiry is being conducted at Udaipur. The impugned transfer order dated 4.6.2002 is also issued from the Udaipur office of the petitioner company and the respondent no.3 also addressed letter to the Udaipur office. At the same time, it may be appreciated that respondent no.3 was working at Panoli Ankleshwar and he came to be transferred to Udaipur, Rajasthan where he was supposed to join latest by 12.6.2002.

In the case of Vinod Rao Vs. Presiding Officer, 1st Labour Court, Ahmedabad and others, XX(2) GLR 262 (D.B.), considering the provisions of Section 10(1)(c) of the Act, wherein the petitioner was working at Ahmedabad and the company situated at Bombay, issued the orders of termination of services to the employee, and the services of the employee terminated by notice given at Ahmedabad, it has been held that the Labour Court, Ahmedabad, also has the jurisdiction to try the reference made under Section 10 (1)(c).

In the instant case, the order of transfer, though made from Udaipur office of the petitioner company, has been implemented and enforced at Panoli Ankleshwar where the petitioner has been stopped from working. Following the above principle, cause of action can be said to have accrued partly at Panoli - Ankleshwar and partly at Udaipur and thus, the Labour Court, Vadodara as well as at Udaipur will have the jurisdiction.

13. It is submitted by Mr. Shah that the remedy against the order dated 7-10-2000 (Anex. B) is available under Rule - 26(A) and in view of the Rule 26 (A) framed under the Act, Article 226 of the Constitution is not attracted.

It is submitted by Mr. K.M. Thakar that the order dated 7.10.2002 staying the inquiry proceedings conducted at Udaipur is passed ex-parte against the petitioner company. Rule 26, 26(A) and 26(B) framed under the Act read as under :

Rule 26

Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex-parte - If without sufficient cause being shown, any party to a proceeding before a Board, Court, Labour Court, Tribunal or an Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or Arbitrator may proceed ex-parte.

Rule 26(A)

Setting aside ex parte Orders, Award and Reports -(1) On an application made within thirty days from the date knowledge of an ex-parte order, award, or report by the party concerned, the Board, Court, Labour Court, Tribunal or Arbitrator may, for sufficient cause, set aside, after notice to the opposite party, such order, award, or report as the case may be.

(2) The Board, Court, Labour Court, Tribunal, or Arbitrator may, on sufficient cause being shown, extend the period referred to in sub-rule (1);

(3) An application under sub-rule (1) shall be supported by an affidavit.

Rule 26(B)

Stay of operation of Awards - The Labour Court, Tribunal or Arbitrator shall have the power to stay the operation of an award, conditionally or otherwise in appropriate cases, until the application for setting aside ex-parte orders is disposed off finally.

As seen above, the Board, Court, Tribunal or Arbitrator has the power to proceed ex-parte under the circumstances pointed out in Rule 26, whereas Rule 26 A provides for setting aside ex-parte order, award and report, and Rule 26 B provides that the Labour Court, Tribunal or Arbitrator shall have the power to stay the operation of an award, conditionally or otherwise in appropriate cases until the application for setting ex-parte order is disposed off finally. Thus, the remedy available to the petitioner company as far as the ex-parte order staying the departmental inquiry at Udaipur is concerned, is available under Rule 26 A.

In the case of Basant Kumar Sarkar and others Vs. the Eagle Rolling Mills Ltd. and others, AIR 1964 SCA 1260, in a case arising under Employees' State Insurance Act, the Supreme Court held that although the powers conferred on the High Court under Article 226 are very wide, they cannot take within their sweep industrial dispute of the kind which the contention of the workman sought to be raised. The proper remedy which was available to the workmen to ventilate their grievances in respect of the said notices and circulars was to take recourse to Section 10 of the I.D.Act, or seek relief, if possible, under Sections 74 and 75 of the Act. In the instant case, as stated above, the petitioner company has the remedy under Rule 26 B framed under the Act against the order dated 7.10.2002.

It may be seen that in the petition it is not stated that the alternative remedy is available but the same is inadequate. In the case of CHANDRAMA SINGH AND MANAGING DIRECTOR, U.P. CO-OPERATIVE UNION AND OTHERS, reported in 1991 (63) FLR, pg. 478 (Alld. H.C.- F.B.) it has been held that :-

" The High Court must not allow its extra-ordinary jurisdiction under Article 226 of the Constitution of India to be invoked if the petitioner has got an alternative remedy and such remedy is not pleaded and proved to be inadequate

> or inefficacious, or if it is not established from the material on record that there exist exceptional or extra-ordinary circumstances to deviate from the well settled normal rule of relegating the petitioner to alternative remedy and permit him to by-pass the alternative remedy. The hurdle of alternative remedy cannot be allowed to be skipped over lightly on a casual and bald statement in the petition that " there is no other equally efficacious or adequate alternative remedy than to invoke the extraordinary jurisdcition of theHigh Court under Article 226 of the Constitution of India." The petitioner must furnish material facts and particulars to sustain such a plea. "

14. It has also been argued by Mr. K.M. Thakar that the Reference order does not refer to disciplinary inquiry proceedings and the reference order is only on the transfer of respondent No.3 to Udaipur and by issuing an ex parte order staying the inquiry proceedings the Labour Court has gone beyond the terms of reference. It is submitted by Mr.Shah for respondent No.3 that the order staying inquiry proceedings at Udaipur is incidental to the transfer, and therefore, the Labour Court cannot be said to have acceded the terms of reference. It may be appreciated that vide order dated 4-6-2002 (Annx. C- pg. 27) respondent no.3 has been transferred from Panoli-Ankleshwar, district Bharuch to Udaipur and for the said transfer, reference order dated 24-9-2002 came to be passed. The schedule referring the dispute of transfer indicates the same having been allegedly passed mala fide as by way of unfair labour practice. It may be appreciated that the transfer order dated 4-6-2002 is alleged to have been disobeyed and disciplinary proceedings instituted, according to the petitioner, and it is for the inquiry proceedings initiated at Udaipur (Rajasthan) the transfer order dated 4-6-2002 is passed. The inquiry proceedings pertains to the basis the dispute namely transfer of respondent no.3 to Udaipur, an act connected with the order of transfer which is the dispute, and therefore, the inquiry proceedings cannot be said to be independent of the dispute. The inquiry proceedings being the consequence of the transfer order cannot be said to be not connected or arising on account of the transfer order. Thus it will be seen that there is nexus between the transfer order and the inquiry proceedings, and therefore a matter incidental to the dispute can be considered by the Labour Court. It may be appreciated that Rule 26 (A) and 26 (B) referred to above besides the 'award' word "order" is

also included, meaning thereby any order required to be passed connected with or incidental to the dispute can always be dealt with by the Labour Court. In my opinion the order relating to the stay of inquiry proceedings passed by the Labour Court cannot be said to be independent of/ unconnected with the dispute pending before the Labour Court, and therefore, the Labour Court cannot be said to have gone beyond the terms of reference. For these reasons, I am unable to accept the submissions of Mr. Thakar on this score.

15. To the last limp of arguments of Mr. K.M. Thakar that in any event the inquiry proceedings could not have been stayed, Mr. Thakar has placed reliance on the decision in case of J.K. DAVE V. STATE OF GUJARAT & ORS, reported in XXX (1) GLR pg. 571. It has been held in this decision that the executive must have ample latitude and the transfer can be stayed or cancelled when there is a concrete evidence of mala fides. In my opinion, this decision will not be helpful to the petitioner atleast at this stage since in this petition there is no stay of transfer order and this Court is not called up to say anything as regards the merits or otherwise of the transfer order.

Reliance is also placed on a decision in case of VASANTLAL N. SHAH V. PUNJAB NATIONAL BANK, RAJKOT , reported in 1990 (1) GLH, 276, wherein it is held that in view of delay in criminal proceedings and the fact that departmental proceedings are initiated for altogether a different purpose, it would be just and proper not to grant any interim directions restraining the department from holding departmental enquiry. It is further held that by holding departmental enquiry no prejudice would be caused to the delinquent. There cannot be any disagreement with this proposition of law.

The order staying inquiry proceedings is an interim/ interlocutory order. It may be appreciated that the Labour court stayed inquiry proceedings at Udaipur till 22-10-2002 which was the returnable date fixed in the Reference (IT) No. 138 of 2002. Ordinarily Writ Court would not interfere with the interim/interlocutory order passed by the Labour Court, especially when the otherside has a remedy available under the Act in view of Rule 22 (B) framed under the Act as pointed out above. Since the petitioner Company has a remedy available under the Act as far as the interlocutory order staying inquiry proceedings is concerned, the contentions advanced in this writ petition by Mr. Thakar for the petitioner can be very well be raised under Rule 22 (B) of the Act

before the Labour Court. However, no opinion is expressed as regards the merits or otherwise of the order staying the inquiry proceedings in this writ petition. Since the petitioner has the remedy available under Rule 22 (B) framed under the Act.

16. The above discussions would reveal that the petitioner is not entitled to the relief claimed in this writ petition and the petition is liable to be dismissed. However, it is made clear that the petitioner may approach the Labour Court against the order staying inquiry proceedings at Udaipur under Rule 22 (B) if so desired.

17. In the result, petition fails. Ad interim relief earlier and as modified vide order dated 18-11-2002 stands vacated. Rule discharged. No costs.

18. In view of the order passed in main petition, no order is necessitated in civil application. Civil Application stands disposed of with no order as to costs.

Dt:26-12-2002 (N.G. Nandi, J)

/vgn

Further order dated 26-12-2002:

Heard. Mr. K.M. Thakar for the petitioner Company prays for extension of injunction together with statement dated 18-11-2002 by the petitioner in this petition, to enable the petitioner to approach the Appellate Court. The injunction granted earlier and the statement dated 18-11-2002 made by Mr. Thakar for the petitioner are extended till 20-1-2003, and till then, the petitioner shall not take any punitive action on the basis of the second showcause notice served on respondent no.3 workman.

Dt: 26-12-2002 (N.G. Nandi, J)

/vgn